



CITY AND COUNTY OF DENVER

DEPARTMENT OF SAFETY FIRE • POLICE • SHERIFF

Office of Manager
1331 Cherokee Street
Room 302
Denver, CO 80204-2720
Phone: (720) 913-6020
Fax: (720) 913-7028

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PUBLIC STATEMENT OF THE MANAGER OF SAFETY REGARDING AN OFFICER INVOLVED SHOOTING BY OFFICER KEVIN FORD RESULTING IN THE DEATH OF NICHOLAS ALVARADO MORALES ON DECEMBER 13, 2009

I. SYNOPSIS

On December 12, 2009, Nicole Martinez (“Cadet Martinez”), was a cadet in the Denver Public Safety Cadet program, and was doing a ride along with Denver Police Officer Kevin Ford. The program mandates that all cadets do a monthly ride along with a first responder in one of the three uniformed Safety agencies (Police, Sheriff and Fire). Cadet Martinez met Officer Ford at roll call before the beginning of his 9:00 p.m. to 7:00 a.m shift in District 4 (southwest Denver). As required, she was dressed in her full Class A uniform, was wearing her bullet-proof vest and was carrying on her duty belt her flashlight, radio, and other gear. Cadet Martinez was not armed with a weapon, in accordance with the policies of the Denver Public Safety Cadet program.

Just after midnight on December 13th, Officer Ford and Cadet Martinez were advised by police dispatchers that residents in District 4 were reporting that a man with a gun had fired several shots, possibly as many as four shots, into the air in the vicinity of the 3500 block of Louisiana Avenue. The suspect description given was that of a male of unknown race who was wearing all black and was last seen walking westbound on Louisiana Avenue in the 3500 block. Officer Ford is a uniformed Denver patrol officer. He drives a fully marked Denver Police car which has large, reflective Denver Police badges on the doors, emergency overheads or lights on top of the vehicle and spotlights on the sides. Officer Ford and Officer Stephen Garber, another uniformed patrol officer who was also driving a marked police vehicle, were dispatched to the call.

Officer Ford drove towards the location looking for a party walking westbound wearing all black. As they neared the location, Officer Ford explained to Cadet Martinez that they were unlikely to find the suspect with the nonspecific description that had been provided. He also told her what to do in case they did contact the armed suspect. She described the discussion this way:

Well, on one of our calls, we got called out to a male who is – just randomly fired shots and the description was he was just in dark clothes. We didn’t have a name or anything. And they said he was going westbound on Louisiana. So we were driving down Louisiana and the officer warned me that most likely we wouldn’t find the suspect because

we didn't have a good description or anything, and he said but if something did happen, to just stay back since I'm not armed or – You know, safety reasons.

As they approached the intersection of West Louisiana Avenue and South Patton Court, both Officer Ford and Cadet Martinez noticed an individual who potentially matched the suspect description. The person they saw was a Hispanic male walking west on Louisiana, wearing a dark hoodie with his hands in his pockets. As the male was walking across the street, Officer Ford did a partial u-turn behind the man who was still in the intersection. Officer Ford made this maneuver to ensure that the police car could serve as a barrier between Cadet Martinez, and the man he was about to contact.

As Officer Ford pulled into the intersection and made his u-turn, the suspect, later identified as Nicholas Alvarado Morales (“Morales”), stopped walking. He was approximately 4 to 5 feet away from the patrol car. Morales turned so that he directly faced the officer’s vehicle. Because the suspect description was so general, Officer Ford was not sure if the man in front of him was, in fact, the armed suspect who had been firing a gun in the neighborhood or if, instead, this could simply be someone walking home. Officer Ford decided to approach the suspect without drawing his gun. Officer Ford radioed, “With one” at 12:05:35 a.m., meaning that he was getting out of his car to contact Morales. The officer began to get out of his patrol car. Before Officer Ford could even get completely out of the car, Morales pulled out a gun from his right side and pointed it at Officer Ford. Cadet Martinez saw the gun and dropped down in her seat. As she described it:

And so we were driving down Louisiana. And at Patton Court, we saw a male in dark clothes. And Officer Ford had turned on the lights and we had barely done a U-turn, maybe not even the whole way, and the kid had drawn his gun. And I freaked out – I'm not armed. So I like dropped down in the passenger seat.

Officer Ford pulled out his gun. He moved to the back of the patrol car for cover. Officer Ford pointed his gun at Morales but did not shoot. The officer was concerned that Morales might be confused and unsure of what to do. As Officer Ford explained, “I didn't know if he had just taken a really bad route to put the gun down or something like that.” Officer Ford gave Morales additional orders to drop the gun, repeating the command at least three times. Rather than put the gun down, Morales brought it up towards eye-level. Morales was clearly not complying. Officer Ford described what happened:

Since I had given him the orders to put the gun down, and he was doing, what looked like to me, the opposite of that, and pointing the gun at me at the same time, it was my thought that he was going to shoot me, and - um – so having a gun pointed at me and all of that stuff, I made a decision to shoot, at that point - um - so I shot at him. I don't remember exactly how many, I want to say approximately five times - aiming towards his center mass area.

Morales did not visibly react to the first several shots fired by Officer Ford. Morales then turned away and fell. When Morales fell, his gun fell to the ground near him. Officer Ford immediately stopped shooting but continued to give verbal commands to Morales to “stay down” and “show me your hands”. Morales tried to stand up but fell.

Within reach of the still struggling Morales was the Ruger 9mm handgun which Morales had been shooting earlier. Officer Ford explained that [Morales was] “still a threat because the gun was really close to him and, you know, I don't know who he is or how violent he could be, so he's still a threat”. He also said:

I remember my main focus; I was really worried about him getting the gun again. It was really close to him.

Officer Ford would not approach Morales until his cover officer arrived. As he explained:

I want to stay back for my protection. The gun's really close to him. You know, obviously, distance is one of those things that helps you not get hit by bullets. So I want to stay a little bit back where I'm at enough so that I can engage if I have to but to create a little bit of distance for me.

Officer Garber was the assigned cover officer on this call. He arrived on scene as the smoke from Officer Ford's shots was still in the air. Officer Garber called on the radio to police dispatch saying, “Shots fired—suspect down.” It was 12:07:19 a.m. Once Officer Garber was on scene, he and Officer Ford approached Morales together with their weapons drawn. Officer Garber saw a gun within reach of Morales and kicked at it to try to get it out of the suspect's reach, but the gun remained close by.

Officer Ford re-holstered his weapon and attempted to handcuff Morales. While Officer Ford was trying to handcuff him, Morales again tried to stand and tried to pull his hands away from the officers. Officer Ford got one cuff on Morales. As Officer Garber was helping to try to get the handcuffs on Morales, who was continuing to resist, Morales was reaching around with his free hand while his still unsecured Ruger pistol lay on the ground near him. Morales had not yet been searched, so it was unknown if he had additional weapons on his person. Morales was forcefully resisting the officers. A neighbor watching the incident said that Morales tried to “buck off” or “fish flop” the two officers who were trying to restrain him.

When Morales, who was still not controlled, kept reaching in the area where his fallen 9mm had landed, Officer Garber became increasingly concerned. As he explained:

I see the suspect laying on the ground and I immediately notice a gun still within arm's reach to his left. ...My – my concern was that there is a – might be another weapon involved and that he could be going for it, reaching for it because we had not had time to secure him, to pat him down, to check for weapons, or anything. Once I saw a gun that wasn't mine or Officer Ford's laying on the ground, then I assumed that it was the suspect's and there might be another one.

The struggle to handcuff Morales continued. Officer Ford attempted to roll him over and get him on his stomach to handcuff him. Morales was kicking and moving and still reaching around such that Officer Ford could not get control of both of his hands. Officer Garber described dropping down to his knee and hitting Morales, telling him, "Stop resisting", "Give me your hands" and "Put your hands behind your back." He describes Officer Ford, who was also yelling commands to "Give me your hand – arm – give me your arm" as "still fighting with this guy". At one point, while Morales' gun lay close by, Morales' pulled his hand free of the officers' grasps. Officer Garber could only use one hand to control Morales because his gun was still drawn for the felony arrest. As Morales continued fighting the officers' attempts to secure him, Officer Garber used his gun as an impact weapon and hit Morales on the head to prevent him from reaching for his weapon and to try to get him under control. Officer Garber dropped his gun and it flew out of his reach but landed near Morales. Officer Garber then started using his elbow to hit Morales, again, in hopes of gaining compliance. That tactic did not work either and Morales continued pulling his hand away. Despite being shot by Officer Ford and struck in the head by Officer Garber's weapon; despite having two officers kneeling on him and trying to control his hands while giving him non-stop commands; Morales' resistance and non-compliance did not stop. It was not until two additional officers joined in the struggle that Morales was secured. Officer Brian Mudloff helped Officer Ford finally get control of Morales' uncuffed hand and together they got the other handcuff on him. However, Morales was still trying to kick, stand, roll around and get away from the three officers when Officer Jeffrey DiManna arrived. Officer DiManna helped to hold the suspect's legs and arms. It wasn't until all four officers combined their efforts that Morales was finally handcuffed and under control. Morales was finally secured twenty-one seconds after Officer Ford fired his weapon. At 12:07:40 a.m., Officer Ford informed police dispatch

Suspect's in custody. You need to lock down the scene, it's an officer involved shooting - nobody's hurt, except the suspect, start the ambulance code 10, gunshot wounds.

The ambulance which Officer Garber had initially requested at 12:05:56 a.m. and for which Officer Ford confirmed the request at 12:07:40 a.m. arrived by 12:09:01 a.m. Officer Mudloff rode in the ambulance with Morales, who was taken to Denver Health Medical Center. There Morales was pronounced deceased by Dr. Peter Pryor at 12:37 a.m.

Little is known about the actions of Nicholas Alvarado Morales before his fatal confrontation with Officer Ford. However, findings from the autopsy provide a possible explanation for Morales' violent resistance to being taken into custody – resistance which continued after being shot in the chest and struck in the head with a firearm and which ultimately required four officers to get Morales in handcuffs and under control. The autopsy revealed that while the cause of death was a single penetrating gunshot wound to the chest, "[a] significant contributing factor is acute methamphetamine toxicity (800 ng/ml). Violent and irrational behavior in individuals with methamphetamine levels between 200 – 600 ng/ml has been reported..."

This Office responded to the scene and observed interviews of citizen and officer witnesses at the time of this incident. We carefully considered the entirety of this case as well as the determinations made by District Attorney Mitch Morrissey and Chief of Police, Gerald Whitman. Additionally, we have received and considered input from the Independent Monitor. After careful and independent review, this Office has determined that no disciplinary action should be taken against Officer Kevin Ford. We have concluded that Officer Ford reasonably believed that the actions of Nicholas Alvarado Morales posed an imminent threat of death or serious bodily injury to Officer Ford and that the use of deadly force against Nicholas Alvarado Morales was reasonable and in accordance with the Denver Police Department's Use of Force Policy.

The purpose of this public statement is to provide a more detailed explanation of the basis of this decision.

II. THE INVESTIGATIVE PROCESS IN THIS CASE

As with all officer-involved shootings, this case was jointly investigated by the Denver Police Department Homicide Unit and the Denver District Attorney's Office. The Office of the Independent Monitor (OIM) was on hand to observe the investigation and provide input, as were members of the Internal Affairs Bureau. Interviews were observed by the OIM, as required by Ordinance and permitted by the protocol of the District Attorney's Office. The criminal investigation was completed and the District Attorney's decision letter was released on January 2, 2010. In the language of the statutory requirements, the District Attorney declined to file charges against Officer Kevin Ford, concluding:

The intent of the officers who responded to the citizens' 9-1-1 calls of shots being fired in their neighborhood was to identify the suspect, protect the citizens from his dangerous conduct, and take the suspect into custody. Morales' armed, non-compliant, life threatening response to the police contact forced Officer Ford to shoot him.

Officers have a right to defend themselves from a perceived imminent deadly threat. Morales clearly presented a deadly threat to Officer Ford. There is no justification to draw a firearm and threaten a police officer who is performing his lawful duty. The officers were attempting to protect the citizens in this neighborhood from Morales' dangerous conduct. When an assailant is ordered by a uniformed police officer to drop a firearm in these circumstances, his refusal to do so invites a deadly force response by the officer. Had Morales simply complied with Officer Ford's lawful commands, the confrontation would have ended peacefully at that time. Instead of dropping the firearm, Morales chose to point and raise the firearm at Officer Ford, who reacted to this deadly threat by shooting Morales. Morales suffered a single gunshot wound. Officer Ford stopped firing when Morales fell to the pavement and was no longer a direct threat.

Based on a review of the totality of facts developed in this investigation, we could not prove beyond a reasonable doubt that it was unreasonable

for Officer Ford to fire the shot that caused Morales' death. Therefore, no criminal charges are fileable against Officer Ford for his conduct in this incident.

At this point, the case was turned over to the Denver Police Department's Internal Affairs Bureau for review. Internal Affairs, pursuant to policy, referred the case to the Use of Force Review Board. On April 28, 2010, the Use of Force Review Board determined that no further investigation was needed and forwarded its recommendations to the Chief of Police, Gerald Whitman. The recommendations of the Use of Force Review Board are advisory in nature and are not binding on Chief Whitman. After reviewing the investigation, considering the recommendation of the Use of Force Review Board and consulting with the Independent Monitor, Chief Whitman concluded that there were no violations of Department rules or policies in this incident. The case was subsequently forwarded to the Office of the Manager of Safety.

Upon the completion of the Police Department's case review and receipt of the files, this Office continued its comprehensive analysis of this case. That analysis and review began with the response to the scene and observation of all officer and civilian interviews at the time of the incident. Since that time, this Office has reviewed the entirety of the investigation files prepared by the Homicide Unit and Internal Affairs Bureau, including officer statements, witness statements, diagrams, photographs, and physical evidence reports. Additionally, this Office studied the policies in effect on the date of the shooting and is aware of relevant training materials and academy training practices. Consideration was also given to the findings of the Denver District Attorney, as well as to the input, recommendations and conclusions of the Independent Monitor, the Chief of Police, and the Use of Force Review Board.

III. DETAILED FACTUAL BACKGROUND

Officer Kevin Ford is currently assigned to District 4 Patrol. On December 12, 2009, he began his shift at 9:00 p.m. He was dressed in full Denver Police Department uniform and was driving a fully marked Denver Police car with badges on the door and lights on top of the vehicle. He had Cadet Nicole Martinez in his car with him doing a monthly ride along. Martinez was unarmed and dressed in a regulation cadet uniform. Just after midnight on December 13th, he received a call of four "shots fired" into the air by an unknown race male, wearing all black, walking westbound on Louisiana in the 3500 block. Officer Stephen Garber also works in District 4 Patrol; he was also working that night in regulation DPD uniform driving a marked vehicle. Officer Ford and Officer Garber were dispatched to the call. According to Officer Garber:

Dispatch had aired that a suspect had fired off approximately four shots, I believe, from a handgun and was last seen walking westbound on Louisiana close to a school, they said, I think... So I make my left westbound onto Louisiana... and I start spotlighting the area with my spotlight. The description, I believe, is a Hispanic male all in black or a black hoody.

Officer Ford drove towards the location looking for a party walking westbound wearing all black. Approaching the intersection of Louisiana Avenue and Patton Court, Officer Ford spotted someone potentially fitting the description, a Hispanic male walking west, wearing a dark hoodie with his hands in his pockets. As the male was walking across the street, Officer Ford pulled around, doing a u-turn, putting the patrol vehicle in between the cadet and the potential suspect. Officer Ford radioed dispatch that he was "Code 6", meaning that he had arrived in the area.

At this point, the suspect, later identified as Nicholas Alvarado Morales, stopped walking and faced the officer's vehicle. He was standing approximately 4 to 5 feet away. Officer Ford was not sure if it this man was the suspect.

Cadet Martinez stated:

Officer Ford had turned on the lights, and we had barely done a u-turn, maybe not even the whole way, and –um - the kid [Morales] had drawn his gun, and I freaked out, I'm not armed so I like, dropped down in the passenger seat.

Officer Garber is almost on-scene, stating:

I see another patrol car with a spotlight on coming eastbound do an immediate u-turn about two blocks away. And that's when I hear Officer Ford air, "431 – I'm out with a suspect – or the party matching the description." So I immediately punch the gas because of the nature of the call...

According to both Officer Ford and Cadet Martinez, Officer Ford began to exit his patrol car. Before he could get out of the car, the suspect, who still had his hands in the pockets of the hoodie, pulled a gun out from his right side and pointed it at Officer Ford. At that point Officer Ford pulled out his gun and moved towards the back of his patrol vehicle for cover. He pointed his gun at the suspect but did not shoot. Officer Ford explained his thinking this way:

As I'm doing this, this guy had stopped walking because he saw I was pulling up near him and turned around to face us, so he's facing towards my vehicle and me. He was pretty close – I'd say four or five feet away at this point. So, you know, hands going towards the gun, you know, I'm getting out of the car not drawing the gun at this point. You know, this guy could be walking home. This is a terrible description of the suspect so I don't know who this guy is. But, you know, I'm getting ready in case, you know, something happens.

So he still has both hands in his hoody pockets.

So – so the plan was I was going to get out. I wasn't going to draw down in him – on him right away. I was going to tell him to get – take his hands out of his pockets. You know, had he complied with that right away, I wouldn't have felt the need to pull the gun.

But as I was getting out of the car, before I even fully got out of the car, his hand had moved. I don't recall whether he – you know, I was just getting out the car – I didn't see whether he had got the gun from under his jack – you know, his hoody or – or his pocket or whatever, but he got it from somewhere in the right side of his body.

And what I do remember is, as I'm getting out of the car, I see the gun. He had it down by his hip down here – And was pointed right at me.

So – so I pull the gun. I – I didn't have my gun out at this point so I pull my gun out and start moving towards the back of my car to go towards cover if necessary. I raise my gun up, point it at him.

It's my decision at this time to not shoot right way, the reason being basically I didn't know if he had just taken a really bad route to put the gun down or something like that. He had been given commands to get – you know, to put the gun down. You know, some people are confused and don't know what to do. So I didn't necessarily think – the thought had crossed my mind that he was going to shoot but I didn't necessarily think he was going to shoot right then.

So I gave him multiple orders – I think it was like three – to drop the gun.

According to Officer Ford, Morales did not appear to be under the influence of any drugs or alcohol when he first observed him. As explained above, Officer Ford gave Morales approximately three orders to drop the gun while moving towards a position of cover. Officer Ford's orders were loud enough that neighbors in the nearby houses could hear the commands. All of Officer Ford's commands were given in English. Morales never stated anything in a different language nor did he do or say anything to indicate he did not understand the commands being given. Rather than put the gun down, Morales brought the gun up towards eye-level. At that point, it was clear to Officer Ford that Morales would not comply with his orders. Officer Ford stated:

Since I had given him the orders to put the gun down, and he was doing, what looked like to me, the opposite of that, and pointing the gun at me at the same time, it was my thought that he was going to shoot me, and - um – so having a gun pointed at me and all of that stuff, I made a decision to shoot, at that point - um - so I shot at him.

Morales took a step or two back, and continued to raise his gun. According to Officer Ford, the gun was:

About his chest level was when I decided that he was going to shoot me.

I don't remember exactly how many [shots I fired], I want to say approximately five times - aiming towards his center mass area.

Morales did not visibly react to the first several shots fired by Officer Ford. Morales then turned away and fell. When Morales fell, the gun fell out of his hand and Officer Ford stopped shooting. Officer Ford continued to give commands to “stay down” and “show me your hands.” Morales again tried to stand but fell. According to Officer Ford:

So at that point, I – you know, I had stopped shooting. I went back to – to commands, you know, ‘Show me your hands, stay on the ground’, that kind of thing. He had turned from his side, he flipped over to his back, and he kind of kicked his feet and it looked to me like he was trying to stand up. He didn’t get there. He didn’t make it. He fell back on the ground. But I kept giving him commands, ‘Stay down, stay down, put your hand – you know, put your hands where I can see them, stay down,’ that kind of thing.

At this point, according to Officer Garber:

So I – I get over there, and as soon as I pull up, I’m – I’m starting to put it in park, I’m already moving fast, I hear what sounds like ‘pop, pop, pop’. I see smoke. The cadet is on the ground taking cover behind, I – I believe it’s the rear wheel on the passenger’s side.

According to Cadet Martinez:

Officer Ford had gotten out of the car and I heard him just once say, ya know, ‘drop your gun’, and he didn’t so I jumped out of the passenger seat and went behind the tire...and then I heard 3 or 4 shots... I didn’t see who fired it because I was behind the [passenger rear] tire... I got up because there was another officer... I figured the kid had been hit... since there was blood on the ground...

Officer Garber arrived and had already called out “shots fired”. Both officers approached Morales and tried to gain control of his hands. Officer Ford attempted to holster his weapon and “because of adrenalin” missed his holster initially, but did ultimately get his gun in the holster. He then attempted to handcuff Morales while Officer Garber held the suspect at gunpoint. After getting handcuffs on one wrist, Morales again tried to stand and tried to pull his hands away from the officers.

According to Officer Ford:

He kept trying to put his arm under him, to lift himself up. He also threw back his arm a couple of times to try and hit me or my partner or knock us off... he was throwing his arm around a little bit.

...as soon as I got that first handcuff on, he started reacting and he started trying to – he took his other hand out and started trying to stand up and was trying to fling it around to, I imagine, trying to hit us, knock us off him, whatever. I was holding the other hand down trying to get his hand. Officer Garber was trying to hold him down and trying to assist with that,

but from his position, he couldn't really get a hold of the guy's hand... Officer Garber was trying to assist Officer Ford in handcuffing Morales. He was up by Morales' shoulders trying to keep him on the ground and prevent him from standing up.

According to Officer Garber:

So I immediately get out. I've got – I've already got my gun drawn. I'm running around to the front of the car where Officer Ford's is. We're like in a – kind of like in a T like that.

And I see the suspect kind of curled up on the ground. I see a gun – it would be to his left – and I hear him kind of moaning, making noise, and he's rolling towards the gun. So I run over and kick the gun to try and get it out of his reach.

So I'm – I'm holding him at gunpoint. Officer Ford comes over and attempts to roll him over and get him on his stomach and he's trying to handcuff him and he starts kicking and moving and he's – he's still reaching around. Officer Ford does not have control of both of his hands. So I drop down on my knee and I start hitting him and I'm like telling him, 'Stop resisting' – you know, 'Give me your hands. Put your hands behind your back.'

And Officer Ford is still fighting with this guy. And at that point one of the suspect's hands gets free and that's when I started using my gun to hit him on the head.

Officer Garber described Morales as being "combative" and stated:

Officer Ford, at one point, I think tried to get on the radio because they – all I could hear was them keep calling us asking us for a status – and he tried to get on the radio and I was like, 'Don't worry about the radio. Let's get him handcuffed.' And when I saw that hand come free, the one hand, that's when I started – I started hitting him, telling him, 'Stop – put your hand behind your back,' because he's reaching around with that hand, he's yelling and everything. So my – my only concern was we've got to get this guy, you know, handcuffed.

Cadet Martinez stated

The covering officer came in and got on top of the kid to help get him in custody and – um - the kid wasn't cooperating still, he was kicking his feet, he was on his stomach but he was still like kicking his feet. So the covering officer had hit him, I think twice... and then they got him in handcuffs.

I don't know about his left arm, but his right arm, he would not put it behind him, and the covering officer hit him... it might have been his first... but he hit him like twice... they arrested him, and he kept kicking.

There was also concern that Morales could have multiple weapons. At that point, Morales was not under control, had not been searched, and was actively resisting officers. According to Officer Garber:

My – my concern was that there is a – might be another weapon involved and that he could be going for it, reaching for it because we had not had time to secure him, to pat him down, to check for weapons, or anything.

Once I saw a gun that wasn't mine or Officer Ford's laying on the ground, then I assumed that it was the suspect's and there might be another one.

And – At – at some point during that, my gun's covered with blood. I dropped it. It seemed like it – it kind of flew out far – far enough away from him and then I started using my elbow to hit him and he's still pulling his hand around. I don't know if he's got another weapon. I already know that one was involved. I don't even know who's – who's been shot, if Officer Ford had been hit, the cadet had been hit. All I know is that I hadn't been hit and it looked like he had been. So I'm using my elbow trying to get him.

Other officers arrived on scene and with their assistance, Officers Ford and Garber were able to handcuff Morales. During this time, Morales was still trying to kick and stand-up. Officer Ford explained:

Officer Mudloff pulled up on Patton here facing us... He jumped in to try and help assist and I – and I said, 'Grab that guy's arm.' So he grabs the arm. We're able to get control of it between the two of us. We get the other handcuff on. Sometime in this – in this timeframe, Officer DiManna shows up and starts assisting. The guy's still trying to kick, stand, roll around, get away. So Officer DiManna comes in to help assist with the guy's legs or arms or hold – you know, help to get him under control.

Once he was under control, Officer Ford was able to request an ambulance "Code 10", meaning with lights and sirens.

When asked why he began firing, Officer Ford stated:

He started raising a gun that was pointed at me and I thought he was going to shoot me.

I fired because it was an immediate threat. I thought he was going to shoot me.

When asked why he took the actions he did, Officer Garber stated that he didn't know if Officer Ford or Cadet Martinez had been injured and:

My – my concern was that there is a – might be another weapon involved and that he could be going for it, reaching for it because we had not had time to secure him, to pat him down, to check for weapons, or anything. Once I saw a gun that wasn't mine or Officer Ford's laying on the ground, then I assumed that it was the suspect's and there might be another one.

When asked if she felt the weapon was pointed in the direction of herself and Officer Ford, Cadet Martinez responded, "oh yeah".

When asked why he stopped firing, Officer Ford stated:

As I was firing, he fell to the ground. As he fell to the ground...the gun fell out of his hand so the immediate threat stopped, in my opinion... Once the gun's out of his hand, there's no more immediate threat. He's still a threat because the gun was really close to him and, you know, I don't know who he is or how violent he could be so he's still a threat but the immediate threat of death or any shot had – had gone at this point so I stopped firing.

Officer Ford stated there is a street light reflecting off ice on the ground and Morales was standing directly below it. Visibility was not an issue and he could see not only Morales but the gun as well.

The ambulance arrived and Morales was taken to Denver Health Medical Center where he was pronounced deceased by Dr. Peter Pryor at 12:37 a.m.

Medical Response

As stated above, Officers Ford and Garber secured Mr. Morales and called for an ambulance to come emergently with lights and sirens, or "Code 10". The ambulance and paramedics were on scene shortly after the incident.

Paramedics Heather Dennis and Austin Mori and paramedic student Timothy Brown responded Code 10 to the scene. They noted that Morales had a wound, approximately 2 cm, to the mid-sternal chest wall. They also noted that he had agonal respiratory effort with a weak radial pulse. He was transported to Denver Health Medical Center.

Medical personnel at Denver Health Medical Center were unable to save his life. Nicholas Alvarado Morales was pronounced deceased at 12:37 a.m. by Dr. Peter Pryor.

An autopsy was performed on December 13, 2009, by Dr. Michael Burson. Signs of medical intervention were noted. The autopsy revealed a 3.4 x 2.5 cm penetrating gunshot wound of the chest. It entered 3 cm from the midline in the left chest, 7 cm above the nipple line and 33 cm below the top of the head. The projectile perforated and lacerated the skin, subcutaneous tissue, sternum and the right upper lobe of the lung, and perforated and fractured the right fourth rib and right scapula before coming to rest beneath the skin overlying the right scapula. There was no exit wound. The projectile was retrieved from the subcutaneous tissue over the right scapula. Multiple bullet fragments were retrieved from the entrance wound and subcutaneous tissue over the right scapula.

Additional findings by the pathologist included blunt force injuries and abrasions and contusions of the face and scalp. There was also hemorrhage in the temporalis muscle, abrasions of the right wrist and a contusion of the right thumb.

A toxicology test was conducted which concluded Morales had acute methamphetamine toxicity. According to the autopsy report, Morales had a blood methamphetamine level of 800 ng/ml.

The medical examiner concluded:

The cause of death is penetrating gunshot wound of chest. A significant contributing factor is acute methamphetamine toxicity (800 ng/ml). Violent and irrational behavior in individuals with methamphetamine levels between 200 – 600 ng/ml has been reported... Additionally, officers at the scene described a large volume of blood under the decedent when he was taken away. A large volume of blood was also discovered by physicians at the hospital upon opening the chest cavity. Thus, it is reasonable to conclude that the single gunshot wound to the chest and resulting blood loss was sufficient to cause the death.

IV. CRIME SCENE INVESTIGATION AND TESTING

Personnel from the Denver Police Department Crime Laboratory and Homicide Unit responded to the scene and collected evidence. The scene was taped off, videotaped and photographed. Measurements were taken and a neighborhood survey was conducted by detectives and officers assigned to those tasks. Detectives searched the crime scene and located all of the shell casings from Officer Ford's weapon.

Officer Ford was carrying a Glock 17. The weapon holds 17 rounds in the magazine plus one in the chamber for a total of 18 rounds. After this incident, Officer Ford's weapon was taken to the crime lab. The crime lab determined that there were five 9mm live rounds gone from his weapon.

Officer Garber was carrying a Glock 17, 9mm weapon. After this incident the crime lab took possession of this weapon. The crime lab determined that all ammunition was accounted for and the weapon was still fully loaded.

At the time of this incident, Morales was armed with a Ruger 9mm P89 semi-automatic pistol. At the time that it was recovered, the magazine was empty and there was one live round in the chamber. Another live round was recovered from Morales' pocket. While there was no evidence that Morales fired his weapon at the South Patton Court and West Louisiana Avenue location, two spent cartridge cases were recovered in the vicinity of the earlier shots fired that had given rise to the neighbor's initial 9-1-1 calls.

From the crime scene at South Patton Court and West Louisiana, officers recovered numerous items of evidence, including:

- Glock Model 17, 9mm handgun belonging to Officer Garber
- Ruger Model P89 belonging to Morales.
- gold colored metal chain belonging to Morales.
- spent 9mm Speer brand shell casing.
- spent 9mm Speer brand shell casing.
- spent 9mm Speer brand shell casing.
- cigarette lighter (on the windshield/wiper blade area of involved officer police vehicle).
- spent 9mm Speer brand shell casing.
- spent 9mm Speer brand shell casing.
- gold colored metal medallion.
- bullet fragment.
- bullet fragment.

From West Louisiana Avenue and Knox Court, the location at which the initial reports of random gunfire originated, officers recovered the following:

- spent 9mm Luger 07 LVE shell casing.
- spent 9mm Luger 07 LVE shell casing.

Officers also recovered \$973.95 in cash from Morales.

Civilian Witness Statements - Summaries

Responding police officers contacted numerous citizens in the area on the night of this incident. Set forth below are summaries of the statements of some of those witnesses. The reports regarding the specific statements of all the witnesses contacted are contained in the files relating to this case.

AK¹

AK lives on South Patton Court. On the night of the incident around midnight she heard approximately 4 gunshots, and noted that about 5 minutes earlier she heard what she thought were gunshots in the neighborhood. The initial shots appeared to be 2-3 blocks away. When she heard the second round of shots, she "hit the floor" and stayed down for about a minute or two. She realized her son was out and wanted to make sure he had not gotten caught up in what was going on outside so she looked out the window. She saw a man on the ground, face down. Two policemen were over him. One had one knee on the ground and one on the man who appeared to be "bucking... I think to get up or get loose" he was "trying to get his hands and knees under him so he can get up". One officer had his hand around one of the man's wrist trying to get something, a black object, out of his hand. The officer did this [up/down motion] 8-12 times then the object went loose, the officer picked it up. The object was L-shaped and "appeared to be a gun" although she could not be sure. The other officer was near his shoulders

¹ For the purposes of this public statement, civilian witnesses are identified by initials only. The full identities of these witnesses are contained in the Denver Police Department files related to this case.

trying to hold him down and hold him still. After he [Morales] dropped what was in his hand, both officers got off of him. At that point there was no more motion from the man on the ground. A minute or two later the ambulance arrived, got him [Morales] packed up and left within five minutes. The ambulance, which arrived one minute and 20 seconds after the struggle was over and Morales was handcuffed, was the only thing that obstructed her view of the incident.

JK

JK lives on South Patton Court. He stated that on the night of the incident he was asleep when his wife woke him up and stated that someone was beating on the door. He looked out the front door and didn't see anyone but saw emergency lights reflecting off their motor home. His wife went into the kitchen and looked out the window and he then followed her looking out the window. He states his window is about 25 to 30 feet from where the incident occurred. He saw a police car in the intersection, two officers moving away from the vehicle and a man on his hands and knees falling forward. The police approached the man yelling, "Get down, stay down!" The man was trying to get back up "in a physical way" and the officers were pushing him back down. He states "there was a kind of a blow to the back of the head or the upper back, but - it was - it was a situation." He states "the individual was shrieking or gasping" as they wrestled and then "he just stopped". One of the officers kicked something away from the front of Morales and he was handcuffed. In "what seemed like just moments, another police car or two arrived, an ambulance arrived." JK stated that the street light was directly overhead, but he could not see anybody's face. He also stated that he did not see a weapon in either of the officer's hands.

MK

MK is the wife of JK. On the night of the incident she heard a "bang" and woke up her husband. She went to the window and saw officers "trying to handcuff someone on the ground."

NV

NV lives in the 3500 block of West Louisiana Avenue. On the night of the incident, several hours before the shooting, someone had come by his house insisting that someone named RL lived there. Eventually NV called the police. Later NV went outside and while outside he heard two gunshots. He thought it might have been related to the earlier RL incident. He looked around the corner and saw a male walking east wearing a black hoodie. He then went to the other side of his house and heard two more shots. He could no longer see the man. He ran into the house and his wife got down on the ground. NV then called 9-1-1 because he believed the man he saw walking east was firing a gun. The man appeared "emotionless" to NV. The person who had come to his house looking for RL did not appear to be the same person who NV believed was firing a gun. The person he thought had been firing a gun was Hispanic, 5'8" to 5'9", weighed between 135 and 145 pounds, had a thin to medium build, was in dark clothing - black hoodie, black pants, and possibly had some light facial hair. He also looked like he was between 17 and 19 years old.

He then saw an officer with emergency lights on but no siren, driving west on Louisiana Avenue heading towards Patton Court. He then heard three or four successive shots. He thought it was the police and not Morales because he did not hear any return shots. He did not hear any yelling.

He stated the area was pretty well lit. NV's 9-1-1 call is also available in the file. In the call he states that someone in a black hoodie, walking west on Louisiana had fired 4 shots.

GA

GA lives on South Patton Court. He lives with MV, his girlfriend, and had a visitor, SA, staying at his house on the night of this incident. GA stated that it was around midnight when he went to lay down in his room. He was lying down when he heard six gunshots. He looked out the window and saw a man fall to the ground and a police officer "got on him and started beating him with his pistol, holding it like a hammer". GA stated that he saw the officer hit the man 4-5 times on the head and the officer was yelling "stop moving". The man was "squirming to maybe try to get away or something". Another police officer was standing up and kicking the man in his upper body. GA saw that officer kick the man at least 3 or 4 times. GA stated that he, MV and SA stood outside in front of his house watching as this occurred. They were saying, "no, no, stop, stop" to each other.

After that, as GA explained it, "cops start coming from everywhere" and the ambulance arrived. The man was put in the ambulance and taken away.

SA went back into the house, but GA and MV stood outside watching the police and medical response. As they were outside another officer approached them. This officer identified himself as Officer Herrera and said that he was conducting a neighborhood survey to see if any of the residents witnessed the incident. Officer Herrera, was not involved in the struggle with the man that they had watched. He approached them and asked them if they heard or saw anything. GA responded he saw "everything that just happened" and "watched a man being murdered" by the police. GA stated that they never yelled to "put the weapon down". He also said that he never saw the man with a gun. He stated that he heard the man screaming but did not hear him scream any words.

GA did not hear the earlier gunshots. He stated that there was a street light up above so he could see the incident. GA also stated that the police car was facing northbound in the intersection and both doors of the car were open.

SA

On the night of this incident, SA was at GA's home on Patton Court. According to SA, around midnight he was in the living room of the house and GA, along with his girlfriend, MV, had gone to bed. He heard five or six gunshots. He looked out the window and saw a police car facing north in the intersection of West Louisiana and Patton. At that point he states he saw two officers out of the car with their guns drawn. Both were wearing police uniforms. Both doors on the police car were open.

At that point he went into the other room to contact GA and MV. The three of them then went outside onto the porch.

SA stated that one of the officers was kneeling on top of the man with his knee in the man's back, repeatedly hitting him in the head with the butt of his pistol, approximately 10 to 15 times screaming, "Shut up! Stop resisting!" The man was screaming on the ground. The other officer was kicking him. The officer that was using his pistol then put it away and began hitting the man with his elbow. More officers showed up 8 or 9 minutes later and after another one to three minutes, the ambulance arrived. The ambulance drove off with the lights on but without sirens. GA and MV had returned into the house to get coats but returned outside. SA remained outside.

SA could not tell if all of the gunshots came from one gun or if the officers were returning fire. He also stated that he did not see the shooting and did not see the man prior to his looking out the window.

He stated that the street light was shining down on the police vehicle and visibility was not an issue.

The statements of GA and SA are obviously of concern to the Department and require additional analysis and comment. Like the District Attorney Mitch Morrissey, this Office closely reviewed the statements of these citizens and compared them to the facts and evidence resulting from the investigation. This Office concurs with the District Attorney's assessment which states, in part:

Two individuals alleged the officers beat Morales to death. Their initial statements made to investigators the morning of the incident did not include these allegations. The two individuals contacted and spoke with local media representatives and appeared on television coverage and in newspaper articles. They alleged that Morales was beaten to death by the officers. They did not observe the shooting. They saw the officers attempting to place the resisting Morales in custody by handcuffing him after the shooting, as is standard procedure for police officers in these situations.

After the media reports, they were contacted again by investigators and gave videotaped statements. When viewed in the context of the totality of the evidence developed in the investigation, the allegation that Morales was beaten to death is simply not supported by the facts. That allegation is most significantly inconsistent with the degree of non-gunshot injury to Morales as reported by Dr. Michael Burson at autopsy. Their description and demonstration of the degree of force used by the officers would clearly have produced more serious injury to Morales. And, Morales' death was clearly caused by the gunshot wound to his chest, not by any other injury. Additionally, the indication the beating went on for minutes is totally inconsistent with the recorded time frames of the officers' contact with Morales from the time he was shot until he was placed in custody. At a minimum, an objective review of the facts would question the accuracy of their account of the incident.

In his statement to investigators, Officer Garber reported that he had struck Morales in the head with his firearm in his right hand during his struggle to control him. In fact, his firearm fell from his hand while doing so. The superficial injuries noted by Dr. Burson are consistent with Officer Garber's statement of his use of force. Additionally, the duration of the contact with Morales is recorded by the radio call records as indicated in the 'Statement of Facts' section of this letter. The use of force lasted seconds, not a number of minutes. And, other witness statements are consistent with the officers' over-all account of the incident. Officer Garber by his own account used physical force to control Morales, including striking him in the head with his firearm. He was clearly justified in using the degree of force he used based on the specific facts and circumstances of this case.

Both SA and GA stated that they never heard earlier shots and did not see Morales with a gun. This directly contradicts the statements given by several other witnesses and by the reports of "shots fired" which prompted Officer Ford and Officer Garber to respond to the scene. Additionally, while there can be no doubt that the struggle to handcuff Morales was violent, neither GA nor SA saw what two other civilian witnesses and all four of the officers involved in subduing him saw: that there was a gun within reach of Morales' free arm, that Morales was reaching around with his free arm throughout the struggle and that Morales was violently resisting by trying to "buck off", kick and pull the officers off of him as he reached around near the area where his dropped gun lay on the ground. In fact, as reported by Officers Mudloff and DiManna, after Officer Garber dropped his duty firearm, both Officer Garber's gun and Morales' guns lay near Morales while Morales was still violently resisting being handcuffed. Although both GA and SA made statements to the media that the police "beat the man to death", both admitted they do not know Morales' cause of death. Finally, neither GA nor SA were aware that at the time of the struggle, Morales was experiencing acute methamphetamine toxicity and had a level of methamphetamine in his blood which was four times the amount at which violent and irrational behavior can occur.

Additionally, both of these witnesses state that they saw one of the officers, presumably Officer Ford, kicking Morales. These statements contradict what was reported by both officers on scene as well as other witnesses and Cadet Martinez. While Officer Garber readily admitted that he tried to kick Morales' gun away and that he used his duty handgun as an impact weapon. However, other than the allegations made by SA and GA, no officer or civilian witness, including AK and JK stated that Officer Ford kicked Morales while he was on the ground or at any other point. The autopsy revealed bruising and abrasions on Morales consistent with the use of the impact weapon, with the attempts to handcuff him (i.e. abrasion on the base of the right wrist) and consistent with him falling after being fired upon. There was nothing indicating any other injuries that could be a result of Officer Ford kicking Morales. In sum, the physical evidence, including the location of the two guns, the witnesses statements and the autopsy findings, make clear that the only reasonable interpretation of these events is that the officers were doing exactly what they said they were doing - trying to move a dangerous weapon out of reach of a noncompliant suspect who was violently resisting being handcuffed.

Although not detailed above, there were other witnesses who heard shots or noises relating to this shooting. Among those witnesses were KD, RH, RL, RS, DS, HT, and MV, all of whom reported hearing gunshots.

Responding Officers

The information provided by Officer Ford and Officer Garber is set forth in detail throughout this Public Statement. In addition to the above officers, numerous other members of the Denver Police Department, including command staff, officers, detectives and lab personnel responded to this incident. Among those who responded and provided statements were Officers Enrique Arellano, John Ashcraft, Johnny Avila, Mark Blakesley, William Cash, Carlos Castillo, Sean Cronin, Jan Elliot, Adam Foisy, Laura Franklin, Michael Hunter, Rick Guzman, Jacob Herrera, Phil Jackson, Richard Jaramillo, Gabriel Jordan, Modie Lee, Fredrick Little, Mark Lung, Kevin Matens, Jason Meier, Crystal Raymonds, Kenneth Reiner, Joseph Sartain, Bradley Working, Sergeants Carlos Aragon, Bret Hinkle, and Lieutenant James Williams

Officer Brian Mudloff heard shots coming from the south of his location and responded to a call of shots fired with the suspect down. When he arrived he observed two officers wrestling with Morales at the northwest corner of the intersection. He approached and assisted them with taking Morales into custody. Morales was on his stomach and was still actively resisting officers. He saw two handguns on the ground at Morales' head. He secured Morales' right arm and placed it into a handcuff. Morales continued to struggle. Officer Mudloff stopped Morales from kicking at the officers by holding them down. When the ambulance arrived, he removed the handcuffs per the paramedic's request.

Officer Jeffrey DiManna responded to West Louisiana Avenue and South Patton Court on the night of the incident to cover for Officer Ford on a report of shots fired. He approached the intersection and observed Officers Ford and Garber attempting to take Morales into custody on the NW corner of the intersection. Officer Mudloff arrived at the same time and also assisted. Officer DiManna grabbed Morales' left arm. He observed a small black and silver handgun on the ground near Morales' head. He also noticed a black handgun on the ground to the left of Morales' head. He moved one of the guns away from Morales. During this time Morales was actively attempting to kick officers. Officer DiManna placed himself against the right side of Morales' body below the waist, to restrain Morales and keep him from kicking the officers. He remained there until the ambulance arrived on scene.

All law enforcement statements and reports can be found in the case file.

V. ANALYSIS

As a general matter, an administrative review analyzing whether an officer-involved shooting was in accordance with Departmental policy focuses on three areas:

- (1) the reasonableness of the tactics utilized by the officer immediately prior to the shooting;
- (2) the reasonableness of the officer's assessment of the threat; and
- (3) the reasonableness of the use of force option selected by the involved officer.

It should be noted that there is a significant difference between the evidentiary standards that were utilized by the District Attorney in his criminal review of this shooting incident and the standard utilized in an administrative review. The criminal review process required a determination of whether, at the moment force was used, there existed proof "beyond a reasonable doubt" that an officer had no legal justification under the applicable criminal statute, C.R.S. § 18-1-707, for the use of physical force and/or deadly physical force under the circumstances presented. That means that Officer Ford could not be found criminally liable unless there was proof beyond a reasonable doubt that, at the time he fired his weapon, it was unreasonable for him to believe that Nicholas Alvarado Morales presented a threat of serious bodily injury or death to himself or to a third person.

The administrative review process is much broader in scope and requires a determination regarding whether there exists a "preponderance of evidence" to show that the involved officer violated the Department's Use of Force Policy or any other rules and regulations that were in effect on the date of the shooting.

The Policy encompasses the criminal statute applied by the District Attorney's Office as it relates to the reasonableness of an officer's actions at the moment deadly force is used, but also encompasses other aspects of tactics and training regarding an officer's actions prior to the actual use of force. The Policy indicates that an officer should recognize that the officer's conduct immediately connected to the use of force may be a factor which can influence the level of force necessary in a given situation. It acknowledges that an officer may escalate or de-escalate the use of force as the situation progresses or circumstances change and may use tactical options (such as warnings, verbal persuasion, cover, concealment, barriers, disengagement, repositioning, retreat, containment and others) as a preferable response to a deadly force confrontation, if reasonable under the circumstances.

The Policy also specifically indicates that an officer is to rely upon his or her training in making the decision as to the level of force to be used. With regard to potential deadly force situations, Denver Police officers are trained in classroom lectures, video based scenarios, and practical exercises to employ certain tactical principles wherever possible or practical. The purpose of these principles is to better ensure the safety of officers and the safety of the public. These include:

1. the use of cover and/or concealment;
2. the use of barriers between the officers and the potential threat;
3. the use of communication among the involved officers, as well as with the potential threat;
4. the use of movement to:
 - a. seek a better tactical position;
 - b. increase the distance between the officers and the threat;
 - c. increase the time the officers have to react to the threat.

As it relates to the sections of the Policy referencing the criminal statute, the Policy expressly incorporates C.R.S. § 18-1-707 which sets forth the legal framework under which a police officer is justified in using deadly physical force. The applicable language states, in part:

A peace officer is justified in using deadly physical force upon another person...when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

In applying that section of the policy, the task in this administrative review is to determine whether the evidence and circumstances of this case make it more likely than not that a police officer would not have been reasonable in believing that Nicholas Alvarado Morales presented a threat of the imminent use of deadly physical force against that officer or a third person.

In addition, as it relates to the provisions of the policy dealing with tactical considerations and de-escalation, the task of this administrative review is to determine whether the evidence presented makes it more likely than not that a police officer would not have been reasonable in employing similar tactics as those used in this case when confronting Mr. Morales.

In making the above determinations, consideration must be given to all the circumstances, including, without limitation, the information which was available to the involved officer(s), as well as any reasonable inferences arising from that information; the observations of the officer(s); the lighting that was present and the visibility at the scene; the distances between the officer and the threat; the logistics at the scene; the timing of the incident; the immediacy of the threat; the nature of other offenses believed to have been committed; the manner in which force was both threatened and used; and the practicality and feasibility of employing other tactical options under the circumstances. It is necessary to gauge the behavior of the involved officer against what would be expected of an objectively reasonable police officer under similar circumstances.

A. Reasonableness of the Officers' Tactics

This analysis requires consideration of the skills and training available to the involved officers, as well as an assessment of the officers' actions before and during the use of deadly force. In this case, Officer Ford went to South Patton Court and West Louisiana Avenue to respond to a call regarding shots fired. When Officer Ford arrived on scene, he approached what he believed could be a suspect who was possibly armed and firing his gun into the air. He had an unarmed cadet in the car with him as he approached Morales. He made the tactical decision to put his car in between Morales and the unarmed cadet.

Officer Ford had just arrived on scene and barely had exited his vehicle when Morales pulled out a gun and began to raise it at him. Even though this was clearly a dangerous situation, Officer Ford did not fire his weapon. Giving Morales the benefit of the doubt in case Morales was confused or uncertain, Officer Ford held his fire to see if Morales may be attempting, through an odd path, to put the gun down. Simultaneously, Officer Ford began moving towards the back of his patrol car to use it for cover. He again ordered Morales to drop the gun at least three times. When Morales refused to comply with the officer's orders and instead raised the gun even higher to a better shooting position, Officer Ford fired his weapon.

Officer Ford was in a clearly marked police vehicle and was wearing a regulation police uniform. There was a street light directly above the scene and according to all witnesses, visibility was not an issue. Officer Ford pulled up in front of Morales who stopped, turned and looked directly at the patrol car and the uniformed officer from a distance of four to five feet away. There is no question that Morales could clearly see that he was being contacted by a police officer in a police vehicle.

Nicholas Alvarado Morales never said a word to any of the officers with whom he had contact. He did not indicate, in any way, that he did not understand the commands being ordered in English. According to Officer Ford, Cadet Martinez and JK, Officer Ford ordered Morales to drop his weapon. Cadet Martinez had taken a position behind the wheel of the vehicle, and while this tactically was completely appropriate for an unarmed cadet, it did prohibit her from seeing what happened in the seconds before shots were fired. However, it is important to note that prior to Officer Ford firing, Cadet Martinez saw Morales draw his gun and heard Officer Ford tell Morales to drop the gun. According to Cadet Martinez:

Officer Ford had turned on the lights and we had barely done a u-turn, maybe not even the whole way, and the kid had drawn his gun. And I freaked out – I'm not armed. So I like dropped down in the passenger seat. And Officer Ford had gotten out of the car and I heard him just once say, you know, 'Drop your gun.' And he didn't. So I jumped out of the passenger seat and went behind the tire...

The duty of the officer responding to this call was to ensure the safety of citizens, responding officers and other emergency personnel, and, if possible in light of his behavior, to take Mr. Morales into custody without harming him. Morales, however,

would not let that happen. Morales had already shown that he was willing to fire his weapon in a residential neighborhood with no regard for the citizens who lived there. He then pulled out his loaded gun and began to aim it directly at Officer Ford. When ordered to drop the weapon, Morales instead raised it to a better shooting position and kept it aimed at Officer Ford. By duty, Officer Ford was obligated to do everything in his power to ensure the safety of Cadet Martinez, the safety of the citizens in the area, some of whom were in houses directly within Morales' line of fire. He was also authorized by statute and Denver Police Department policy to protect himself from the threat of deadly force.

The decision to fire at Mr. Morales was tactically sound and necessary to ensure that the community was not endangered by this suspect who was armed and shooting around the neighborhood.

After Morales had fallen to the ground, he still did not give up the fight. He continued attempting to stand up and was fighting Officer Ford's attempt to place him in handcuffs. Morales continued to reach around him where his loaded gun lay within reach. Officer Garber approached and, seeing this struggle, attempted to assist Officer Ford. While the use of a handgun as an impact weapon is generally discouraged under the Denver Police Use of Force Policy, it is acceptable in deadly force situations. Here, there is an armed man resisting arrest who had been firing his weapon prior to the officers arriving on-scene, who then pointed a loaded weapon at an officer. When the suspect was on the ground and partially handcuffed, he still had one free hand and was continuing to reach with that hand to the area where his loaded gun lay nearby. The violence and unpredictability of Morales' noncompliance ultimately required four officers to subdue him and finish handcuffing him – despite the fact that Morales had already received a gunshot wound which would ultimately be fatal. The autopsy findings established, as noted above, that Morales was experiencing acute methamphetamine toxicity. The level of methamphetamine in his blood was four times the level at which people can become irrational and violent.² While this information was not known to Officer Garber as he tried to help Officer Ford handcuff Morales, it does confirm what the officers clearly saw – that Morales was violent and irrational in his resistance. Morales' behavior, along with the proximity of his gun and his ability to reach for his weapon continued the deadly threat which he had presented when first confronted by Officer Ford. In this situation, while Officer Garber's decision to use a handgun as an impact weapon may have been "discouraged" under the policy, it was tactically reasonable given the totality of the situation.

Officer Ford quit firing immediately when Morales fell to the ground and continued to cover Morales until Officer Garber arrived and was able to assist. It took a number of seconds, a variety of tactics as discussed both above and below, and a total of four officers to finally get Morales handcuffed. Immediately after the shooting, Officer Garber had called for an ambulance and Officer Ford repeated the call for medical

² According to the National Institute of Health, long-term methamphetamine abusers exhibit symptoms that can include anxiety, confusion, insomnia, mood disturbances, and violent behavior. They also can display a number of psychotic features, including paranoia, visual and auditory hallucinations, and delusions.

assistance as soon as they gained control of Morales. The officers stayed with him until paramedics arrived and took over his care, at which time Officer Mudloff rode in the ambulance with Morales to the hospital.

From the moment he arrived on scene, Officer Ford had neither the time nor the tactical options needed to de-escalate the situation. Because Morales chose to stop and directly face the patrol car from 4 to 5 feet away from Officer Ford's driver door, there was no option for avoiding a close up confrontation. Immediately after Officer Ford stopped his vehicle and attempted to step out of it, Morales brandished his weapon, bringing it out of concealment, aiming it at Officer Ford and raising it to a shooting position. Officer Ford only had time to yell for him to "drop the gun" before Morales had raised it, aiming at the officer. Given how quickly this situation evolved, Officer Ford utilized the only piece of cover that was available to him – the back of the police car. Morales refused to talk or engage with the officers in any way. In sum, the behavior of Nicholas Alvarado Morales had eliminated all other de-escalation options.

In assessing whether the tactics used by the officer involved in this shooting were reasonable, this Office has considered the totality of the circumstances, including the information available to the officer at the time and the specific actions of Officer Ford when he confronted Morales. The tactical decisions made based on the information that Morales was armed and shooting his weapon into the air in a residential neighborhood, and had pointed the weapon at Officer Ford, were clearly appropriate.

Throughout this incident, Nicholas Alvarado Morales did not comply with the commands to drop his weapon and was combative with the officers. He did not speak to them and tried to kick them and run away even after having been shot. When on the ground he continued to reach for his loaded weapon while fighting off the officers. By choosing to raise his gun and point it towards Officer Ford, Morales eliminated all the officer's other options, except the use of deadly force.

In looking at the entirety of the situation, the officer's tactics were reasonable from the time of the initial stop through the shooting. Morales refused to even acknowledge, let alone obey, police commands to drop the weapon. Instead Morales chose to raise his loaded handgun and aim it at Officer Ford. Morales' actions gave Officer Ford no choice other than to use deadly force so as to carry out his sworn duties. Those duties require police officers to protect the public and to enforce the law and apprehend suspects. This officer properly chose to take all necessary measures, including deadly physical force, to carry out those duties. Nicholas Alvarado Morales' actions eliminated any opportunity for Officer Ford to de-escalate the situation or to employ any other tactic that would lessen the likelihood or necessity for deadly force. In light of the immediacy and deadly nature of the threat which Morales posed at the point at which Officer Ford fired upon him, this Office concludes that appropriate tactics were used. Based upon the totality of the circumstances, no other reasonable tactic was available that might have allowed Officer Ford to avoid or reduce the likelihood of a deadly force encounter.

B. The Reasonableness of the Assessment of the Threat

This analysis requires consideration of the justification for using force. In evaluating whether the officer's assessment was reasonable, this Office must examine what the officer knew at the time he was assessing the threat before him. In this case, as pointed out in the above section, at the time Officer Ford encountered Morales, he did have reason to believe that Morales could be the suspect that they were looking for who had been firing a gun in the area. Even with that knowledge, Officer Ford still did not, initially, draw his weapon to contact Morales. According to Officer Ford:

So, you know, [my] hands going towards the gun, you know, I'm getting out of the car not drawing the gun at this point. You know, this guy could be walking home. This is a terrible description of the suspect so I don't know who this guy is. But, you know, I'm getting ready in case, you know, something happens. So he still has both hands in his hoody pockets.

So – so the plan was I was going to get out. I wasn't going to draw down in him – on him right away. I was going to tell him to get – take his hands out of his pockets. You know, had he complied with that right away, I wouldn't have felt the need to pull the gun.

But as I was getting out of the car, before I even fully got out of the car, his hand had moved. I don't recall whether he – you know, I was just getting out the car – I didn't see whether he had got the gun from under his jacket – you know, his hoody or – or his pocket or whatever, but he got it from somewhere in the right side of his body.

And what I do remember is, as I'm getting out of the car, I see the gun. He had it down by his hip down here – And was pointed right at me.

So – so I pull the gun. I – I didn't have my gun out at this point so I pull my gun out and start moving towards the back of my car to go towards cover if necessary. I raise my gun up, point it at him.

Officer Ford learned very quickly that Morales did, in fact, have a gun on him when he held it up at the officer. When confronted by this noncompliant and threatening suspect, Officer Ford appropriately acted upon appearances. In this case every action taken by Morales, including his using his gun to threaten Officer Ford, led to the inescapable and reasonable determination that Morales was a lethal threat. Nonetheless, Officer Ford gave Morales another opportunity to comply with his orders to “drop the gun” and “put the gun down”. Officer Ford held his fire, unsure if maybe Morales was confused or as Officer Ford stated:

It's my decision at this time to not shoot right way, the reason being basically I didn't know if he had just taken a really bad route to put the gun down or something like that. He had been given commands to get – you know, to put the gun down. You know, some people are confused and don't know what to do. So I didn't necessarily think – the thought had

crossed my mind that he was going to shoot but I didn't necessarily think he was going to shoot right then... So I gave him multiple orders – I think it was like three – to drop the gun.

Officer Ford gave Morales an opportunity to comply, despite the fact that he had a loaded gun out and it was pointed towards the officer. Additionally, Officer Ford knew someone in the area fitting Morales' description had been firing a gun, thus establishing that the gun was operable. Officer Ford also knew Morales had a gun and he knew that, at least upon initial contact, Morales refused to put the gun down.

In looking at the totality of this incident, it is clear that Nicholas Morales was the escalating force in the situation. He did not take the opportunity given to him by Officer Ford to drop the weapon and did not verbally indicate that he would comply or that he did not understand.

Moreover, the toxicology reports show that Morales was under the influence of methamphetamine. Mr. Morales' behavior was very unpredictable prior to his encounter with Officer Ford. The initial call to the police was made because of his firing a gun indiscriminately through a residential neighborhood. Officer Ford gave him a chance to comply with police commands and drop his weapon. Morales' response to the officer's attempts to de-escalate the situation and peacefully resolve it was to raise his gun at Officer Ford. At every step of the way, this confrontation was escalated by Nicholas Morales' actions.

Officer Ford approached him with caution. He placed his vehicle between Morales and the cadet riding with him. He tried to move towards the back of the car for cover. He tried to establish communication, to get Morales to drop the gun. He gave clear directions and verbal commands that could end the situation peacefully. When Morales pulled a gun out of concealment and pointed it at Officer Ford did not shoot, but rather repeatedly told him to "drop the gun". Officer Ford did everything that he could to de-escalate a situation with a clearly armed suspect who has already fired his weapon through the neighborhood.

Rather than comply with or even respond to the officer's orders, Nicholas Alvarado Morales chose to raise his loaded gun in what appeared an attempt to fire on Officer Ford. As he raised the weapon, he did not say a single word or even acknowledge the commands the officer was yelling at him. Rather than dropping his gun as ordered, he continued raising it into position to fire. Even in these last seconds, Officer Ford gave Morales the opportunity to surrender. He held his fire while ordering him to "drop the gun!"

Officer Ford had only seconds to make a decision regarding Morales' intentions and the threat he imposed. In those final seconds, Nicholas Alvarado Morales chose to escalate a threatening situation to a deadly threat confrontation. Rather than drop the gun and surrender peacefully, he chose to raise the gun at Officer Ford. At that point Officer Ford could have reached no other objectively reasonable conclusion than that Nicholas Morales intended to shoot him. As stated by Officer Ford:

At this point, instead of dropping the gun, he started raising the gun up towards his eye level. And it was my thought at that time that most people don't shoot from down here [motioning towards waist level]. Most people shoot from up here [motioning towards eye level]. Since I had given him the orders to put the gun down and ***he was doing what looked to me like the opposite of that and pointing the gun at me at the same time, it was my thought that he was going to shoot me.*** (Emphasis added)

And so having a gun pointed at me and all that stuff, I made a decision to shoot at that point, so I shot at him.

A thorough review of this case shows that at every point during this encounter, rather than compliance and de-escalation, Nicholas Morales, instead, chose escalation and threatening behavior. This conclusion is confirmed by the description of his behavior by neighbors who stated that even after being on the ground, Morales continued to kick, continued to try to get up, continued resisting the officers and continued reaching for his loaded weapon which had fallen near him.

These facts lead inescapably to the conclusion that, in the opinion of this Office, the perceptions of Officer Ford that he was in imminent danger of having deadly physical force used against him by Nicholas Alvarado Morales, was objectively reasonable.

C. The Reasonableness of the Use of Force Option

This analysis requires consideration of the justification for the amount of force utilized by Officer Ford at the point where he resorted to deadly physical force in firing his weapon at Morales. As stated earlier, the language of C.R.S. § 18-1-707, which defines the circumstances under which a police officer may use deadly force, is incorporated into the Denver Police Department's Use of Force policy. The section reads, in pertinent part:

A peace officer is justified in using deadly physical force upon another person...when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

The Department's Use of Force Policy focuses on the "objective reasonableness" of a police officer's decision to use deadly physical force under the "totality of circumstances" present at that time. The officer is required to rely on his training, experience and assessment of the situation in deciding the level of force to be employed, and to exercise reasonable and sound judgment. The Policy recognizes that police officers often face circumstances that are "tense, uncertain and rapidly evolving," requiring them to make split-second life or death decisions. In such circumstances, a higher level of force may be deemed reasonable than would be the case if the officer had minutes or hours to make that choice. The policy also provides that the greater the level of threat facing the officer, the greater the level of force that may be used by the officer.

It is important to point out that under the Department's Use of Force Policy, as well as the criminal statutes governing the use of force, an officer is not deemed to have used excessive force simply because it is later determined that the officer was mistaken in his belief that a subject posed an imminent threat of death or serious bodily injury. An officer need only base a decision to use deadly force on an "apparent necessity", not an "actual necessity". Similarly, an officer is not required or expected to wait until he is fired upon, or has a weapon pointed directly at him, in order to use deadly physical force. Such a policy or practice would subject an officer to the grave danger of being injured or killed and would be highly impractical. Thus, an officer is entitled to act on appearances. However, in doing so, it is the officer's responsibility to draw reasonable conclusions from the facts and surrounding circumstances.

The facts discussed above are equally dispositive in determining whether the degree of force which Officer Ford used against Nicholas Alvarado Morales was reasonable and justified. At the point when Officer Ford fired his weapon, the actions of Morales had created a situation in which the officer reasonably believed that deadly physical force was imminent and that his life was in danger.

As noted by District Attorney Morrissey in his previously cited letter to Chief Whitman:

Morales' armed, non-compliant, life threatening response to the police contact forced Officer Ford to shoot him.

Officers have a right to defend themselves from a perceived imminent deadly threat. Morales clearly presented a deadly threat to Officer Ford. There is no justification to draw a firearm and threaten a police officer who is performing his lawful duty. The officers were attempting to protect the citizens in this neighborhood from Morales' dangerous conduct. When an assailant is ordered by a uniformed police officer to drop a firearm in these circumstances, his refusal to do so invites a deadly force response by the officer. Had Morales simply complied with Officer Ford's lawful commands, the confrontation would have ended peacefully at that time. Instead of dropping the firearm, Morales chose to point and raise the firearm at Officer Ford, who reacted to this deadly threat by shooting Morales. Morales suffered a single gunshot wound. Officer Ford stopped firing when Morales fell to the pavement and was no longer a direct threat.

When Officer Ford was confronted by Morales, all of the information that he had pointed to someone who would do him harm. He tried to talk to Morales and get him to drop the weapon. He held his fire and gave Mr. Morales time to put the gun down. He told him to "drop the gun!" before taking any action. Had Mr. Morales simply complied, there could have been a peaceful ending to this interaction. Unfortunately, that was not what Nicholas Alvarado Morales chose to do.

These facts and the circumstances surrounding this event lead to the conclusion that the belief of Officer Ford that he was in imminent danger from deadly physical force was objectively reasonable. Additionally, these facts and the circumstances surrounding this event lead to the conclusion that the belief of Officer Ford that he needed to use deadly force in response was also objectively reasonable. No lesser degree of force could have been or should have been reasonably expected of this officer.

D. Summary of Findings

It is the finding of this Office that the actions of Officer Ford in firing on December 13, 2009, were reasonable and necessary to defend against the active and imminent threat posed by Nicholas Alvarado Morales. The officer's actions were direct and appropriate responses to what he reasonably believed to be the imminent use of deadly physical force against him. Given these circumstances, this Office concludes that Officer Ford's actions were in compliance with the provisions of the Denver Police Department Use of Force Policy.

VI. Additional Issues

A. Impact Weapons

As noted above, officers are entitled to act upon appearances in assessing the imminent danger they are confronting when they must make a decision regarding the use of deadly force. The reasonableness of those perceptions and decisions must be determined on a case-by-case basis, taking into consideration the totality of the circumstances.

The Denver Police Department's Use of Force Policy, Operations Manual 105.01(5)(a)(4) states:

Officers are discouraged from using a duty handgun as an impact weapon for the following reasons:

- A. The inherent danger of an accidental discharge endangering the officer and other bystanders.
- B. The firearm is generally an ineffective impact weapon due to its construction and weight.

However, this same policy states that officers "must be able to articulate a compelling need to use any other device or object as an impact weapon." - Operations Manual 105.01(5)(a)(3). The policy goes on to state that "the head and neck shall not be intentionally struck with the impact tool/device, ***unless the officer is justified in using deadly force***". Operations Manual 105.01(5)(b)(3). (Emphasis added)

In this case, as discussed above, the officers were justified in using deadly force. They were dealing with a suspect who was armed with a loaded gun, had shot throughout the neighborhood without regard for the safety of the residents, had raised his loaded gun at an officer in full uniform and a marked patrol vehicle, was actively resisting arrest even after sustaining a gunshot wound to the chest and who appeared to be reaching for a loaded gun that had fallen on the ground near him.

Numerous factors can be considered in reaching a determination about the reasonableness of an officer's use of force. Some of these factors may include, without limitation, the information that the officer knew or should have known prior to utilizing

force; any reasonable inferences that should have been drawn from that information; the observations of the officer; the logistics of the scene; the timing of the incident; physical factors such as the lighting in the area; the distance between the officer and the person with the weapon; the physical appearance of the weapon and the manner in which the person handles it; the immediacy of the threat and the time available for reaction by the officer; and the movement and activity of the person with the alleged weapon.

All of these factors, as well as a multitude of others, can - and often will - affect the determination of whether an officer's use of force was reasonable under the circumstances.

In this case, as previously discussed, Mr. Morales was firing a weapon around midnight through a residential neighborhood. He was later determined to be under the influence of methamphetamine to such a level that it was likely to cause him to act violently and irrationally. He had already raised his weapon at Officer Ford. He refused to comply with the officer's commands to "drop the weapon". Officer Garber had no idea when he arrived on scene who was armed, who had fired, and who was injured. Finally, even after he was injured, Morales continued resisting arrest and attempting to fight off the officers. As stated by Officer Garber:

Officer Ford comes over and attempts to roll him over and get him on his stomach and he's trying to handcuff him and he starts kicking and moving and he's - *he's still reaching around*. Officer Ford does not have control of both of his hands. So I drop down on my knee and I start hitting him and I'm like telling him, 'Stop resisting' - you know, 'Give me your hands. Put your hands behind your back.' And Officer Ford is still fighting with this guy. And at that point, one of the suspect's hands gets free and that's when I started using my gun to hit him on the head. And - At - at some point during that, my gun's covered with blood. I dropped it. It seemed like it - it kind of flew out far - far enough away from him and then I started using my elbow to hit him *and he's still pulling his hand around*. *I don't know if he's got another weapon. I already know that one was involved. I don't even know who's - who's been shot, if Officer Ford had been hit, the cadet had been hit*. All I know is that I hadn't been hit and it looked like he had been. (Emphasis added)

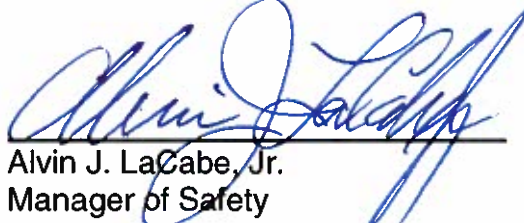
In short, Morales clearly posed a deadly threat first to Officer Ford and to then to the assisting officers as he continued to resist even after being shot. Based on these facts, this Office believes that Officer Garber was reasonable in interpreting the actions of Nicholas Alvarado Morales to believe that he was a deadly threat and use of deadly force was appropriate, including using his duty handgun as an impact weapon.

VII. CONCLUSION

In closing, this Office wants to assure the public and the members of this Department that it has reviewed and analyzed this case carefully. The conclusions reached here are consistent with those of the District Attorney's Office, the Chief of Police and the Independent Monitor. These consistent conclusions result from no other reason than that they are dictated by the facts. It is always a concern to the Department when a police officer has to use deadly force in the line of duty. However, in many instances, as in this case, the actions of the person against whom force was used have precipitated that use of force.

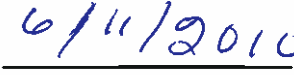
These officers were responding to a call of shots fired in a residential neighborhood in the late hours of the night. Officer Ford arrived on scene with an unarmed cadet to find Morales high on methamphetamine pointing a loaded weapon at him. Morales refused to comply with demands to drop the weapon and instead raised it even higher at the officer. Officer Ford gave him the opportunity to comply and gave him time to drop the gun. Despite these efforts, Morales continued to escalate the situation. Throughout this deadly encounter, the actions taken and tactics used by Officer Ford were those which he reasonably believed were necessary to protect his life. Both Officer Ford and Officer Garber acted appropriately and reasonably to stop the imminent threat posed by Nicholas Alvarado Morales.

It is clear that on December 13, 2009, Officer Kevin Ford acted reasonably under the circumstances with which he was confronted.


Alvin J. LaCabe, Jr.
Manager of Safety


Date


Mary A. Malatesta
Deputy Manager of Safety


Date